IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6314 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? :

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ATMARAM JETHANAND LOKVANI

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR GK RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 30/01/2002

ORAL JUDGEMENT

The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "Corporation") challenging the judgement and award passed

by the Industrial Tribunal, Vadodara in Reference (IT) No.128 of 1998 dated 29.11.1995 whereby the reference was allowed and the order of the petitioner corporation dated 28.2.1995 retiring the respondent workman was quashed and set aside and it was ordered that the respondent workman would be paid full salary and all consequential benefits for the period from 1.3.1995 to 31.7.1995 within thirty days. If that amount is not paid the same shall be paid with interest at the rate of 12 % per annum.

2. The case of the petitioner corporation is that the date of birth of the petitioner was noted to be 4.2.1937 and on the basis of that he was retired on 28.2.1995. Learned advocate Mr.Rathod appearing for the respondent workman has made available a copy of the Service Book of the respondent workman wherein it is recorded that on the basis of Case No.707 dated 4.2.1971 of the Civil Surgeon, Vadodara the date of birth was corrected from 1.7.1937 to 4.2.1937. On the next page of the Service Book it is mentioned in column 15 that,

> "He is medically examined by Civil Surgeon, Baroda and found fit vide Certificate No.707 dated 4.2.1971."

This takes out the force of the contention raised by Mr.Rathod on behalf of the respondent workman that the date of birth is corrected by the petitioner corporation without intimation to the respondent workman.

3. Mr.Hardik Raval, learned advocate appearing for the petitioner corporation vehemently submitted that normally any request for change of date of birth of a workman in latter part of the service, when he reaches the age of retirement is not entertained by the employer. There are judgements to that effect that when a request is made at the fag end of service career the same should not be entertained.

Mr.Hardik Raval, learned advocate for the petitioner corporation relied upon relevant portion of para 22 of the judgement of the Honourable the Apex Court in the matter between G.M. Bharat Coking Coal Ltd., West Bengal v. Shib Kumar Dushad & others, reported in (2000) 8 SCC 696, wherein the Apex Court referred to a decision in the case of Burn Standard Co. Ltd. v. Dinabandhu Majumdar, reported in (1995) 4 SCC 172. The Court was pleased to quote para 10. The relevant part of para 22 reads as under:

> "22. .. .. The fact that an employee

> of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his service record, the very conduct of non raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his 'service and leave record' could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/ petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his 'service and leave record' or service register with the avowed object of continuing in service beyond the normal period of his retirement."

Mr.Raval submitted that in the present case after the respondent workman retired on 28.2.1995 he raised dispute in the year 1998 and therefore, the same ought not to have been entertained by the learned Member of the Industrial Tribunal, Vadodara. Mr.Hardik Raval submitted that the date of birth was on the basis of certificate of Civil Surgeon dated 4.2.1971. The said certificate was issued after examination of the respondent workman by the Civil Surgeon. Therefore, contention that the respondent workman did not know about that change of date of birth is not correct and the same is without any substance. It is clear from the Service Book, a xerox copy of which is taken on record that the Civil Surgeon had examined the employee and had issued a certificate. On the basis of that certificate the date of birth was corrected. An endorsement to that effect is made in the Service Book and the same was within the knowledge of the respondent workman. Therefore, there is no question to entertain

the request of the respondent workman for the back wages and consequential benefits for the period from 1.3.1995 to 31.7.1995. The judgement and award of the Industrial Tribunal is required to be quashed and set aside.

4. Learned advocate Mr.Rathod relied upon the judgment of the Honourable the Apex Court in the matter of Sarjoo Prasad v. The General Manager and another, reported in AIR 1981 SC 1481. Mr.Rathod contended that if the date of birth of the employee is altered by the employer after accepting it without giving an opportunity to the employee, the order correcting the date of birth retiring the employee on that basis is liable to be quashed and set aside in view of the principles of natural justice. The judgement does not help the respondent workman in any manner inasmuch as in the present case there is no question of altering the date of birth by the petitioner corporation without giving opportunity of hearing. In fact it was the certificate of Civil Surgeon on the basis of which the petitioner corporation entered the correct date of birth. That certificate was issued by the Civil Surgeon after examining the employee. Therefore, this decision of the Honourable the Apex Court is of no help to the respondent workman.

5. In the result the petition is allowed. Rule is made absolute with no order as to costs.

(Ravi R. Tripathi, J.)
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